

CIVIL COVER SHEETI CASE STYLEIN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR BREVARD COUNTY, FLORIDAMARY M LOMBARDO, individually,
and as a City of Cocoa Beach resident and
taxpayer and as a aggrieved party

CASE NO

2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH, a subdivision
of the State of Florida

Defendant

FILED IN M.B.
CLERK OF CIR CT
BREVARD CO FL

2011 APR 12 P 4 21

MITCH NEEDELMAN

II TYPE OF CASE (Place an x in one box only If the case fits more than
one type of case, select the most definitive)Domestic RelationsTortsOther Civil☐ Simplified dissolution☐ Professional
Malpractice☐ Contracts☐ Dissolution☐ Products
liability☐ Condominium☐ Support-IV-D☐ Auto negligence☐ Real property
Mortgage foreclosure☐ Support-Non IV-D☐ Other negligence☐ Eminent Domain☐ URESA-IV-D☐ Other domestic relations☒ Other☐ URESA-Non IV-D☐ Domestic violence

III Is Jury Trial Demanded in Complaint?

☐ Yes ☒ NoDATED April 12, 2011The Law Offices of Koons & Gighotti
25 West New Haven Avenue
Suite G
Melbourne, FL 32901
Telephone (321) 956-7900
Facsimile (321) 956-7747Case # 05-2011-CA-014614-XXXX-XX
Document Page # 1

017495638

STEPHEN R. KOONS, ESQUIRE
Florida Bar No 163069
Attorney for the Plaintiff

1/10

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY, FLORIDA

2283002

MARY M LOMBARDO, individually,
and as a City of Cocoa Beach resident and
taxpayer and as a aggrieved party

Plaintiff,

v

CASE NO

2011 CA 14614
Turner

CITY OF COCOA BEACH, a subdivision
of the State of Florida

Defendant

MITCH NEEDELMAN
2011 APR 12 P 4 21
FILED IN ML3
CLERK OF CIR CT
BREVARD CO FL

Not Suitable For Imaging

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW, the Plaintiff, **MARY M LOMBARDO**, by and through her undersigned
counsel and sues the Defendant, **CITY OF COCOA BEACH**, and states

JURISDICTION AND VENUE

- 1 This is an action for injunctive relief
- 2 Venue is proper in Brevard County Florida, where the cause of action occurred and
where the Defendant city is located

PARTIES

- 3 Plaintiff, **MARY M LOMBARDO**, is a full time Brevard County, Cocoa Beach
resident and municipal taxpayer, and is also an aggrieved party due to her payment
of a photo enforced failure to obey red traffic signal "ticket", allegedly in violation
of F S 316 075, issued by the City of Cocoa Beach for an alleged violation that
occurred on September 22, 2010 at N Atlantic Ave and S R 520, in Cocoa Beach,
Brevard County, Florida A true and correct copy of said Notice of Violation is
attached as Exhibit "A"
- 4 Defendant **CITY OF COCOA BEACH**, is a municipality and is a subdivision of the

Case # 05-2011-CA-014614-XXXX-XX
Document Page # 2
017495639

State of Florida

SOVEREIGN IMMUNITY NOTICE

5 Defendant, City of Cocoa Beach, is a municipality and subdivision of the State of
Florida. As such, any claim to recover damages requires that a pre-suit Notice of
Claim be sent to the Defendant, Pursuant to F.S. 768.28(6)(a) 2011. Said Notice was
sent to the City by U.S. Mail, return receipt requested, certified on April 8, 2011, but
since this action at this time seeks only injunctive relief and not damages, said
injunctive action may proceed prior to the denial of the claim by the Defendant (see
Exhibit "B")

INJUNCTIVE RELIEF

6 That on or about April 2, 2010, the City of Cocoa Beach, instituted, with the
assistance of a private vendor, a red light camera enforcement program, at the
intersections of N Atlantic Ave and Fisher Drive, and N Atlantic Ave and SR 520,
within the city limits of Cocoa Beach, Brevard County, State of Florida

7 That said Red Light Camera Enforcement Program was instituted pursuant to F.S.
316.0083, creating the "Mark Wandall Traffic Safety Program"

8 That in the first nine months of the institution of this program, 4,369 traffic citations
have been issued

9 That under the system so instituted under the City's action and direction, "red light"
cameras were set up at the above described intersections. If an alleged violation was
detected, a Notice of Violation was generated by the City of Cocoa Beach
Intersection Safety Program, P.O. Box 22091, Tempe, Arizona, 85285-2091

10 Said Notice of Violations came with instructions that if payment of \$158.00 was not

made, you may be responsible for court costs and fees and may be fined up to \$500.00 (see exhibit "A", page "B")

- 11 That in reality, said Notices were generated by a third party vendor, under the authority and direction of the Defendant. In addition, said records were reviewed by a designated Cocoa Beach Police Officer who would allegedly sign off on the violation. Upon information and belief said signatures were electronically (robo) signed.
- 12 That under the system so instituted by the City, if said Notices of Violation were not paid within 30 days, then a document entitled "Florida Uniform Traffic Citation" would be mailed again from the "Cocoa Beach, Violation Processing Center", in Tempe Arizona, again allegedly signed off by the reviewing Cocoa Beach Police Officer.
- 13 That your Plaintiff did not know, nor was she told by the City, that the "evidence" against her was inadmissible hearsay.
- 14 That further, after investigation, the Plaintiff has learned that the yellow transition light from green to red was "short-yellowed" by the City, and was not in compliance with FDOT standards, thus giving her and all others inadequate time to lawfully enter the intersection or stop.
- 15 That your Plaintiff submits that this "program" is doing irreparable harm to all others who drive in the City at these locations, because this program is not sustainable under Florida law.
- 16 Your Plaintiff submits that it is inevitable that the City will eventually be required to reimburse all ticket payers who have been the victim of this scheme to convert funds

from the motoring public

- 17 Further, your Plaintiff objects to the continued use of city funds and resources, including city employee time and effort necessary to maintain the existing program and submits that these resources not be squandered on such a non-sustainable city program
- 18 Further, the Plaintiff submits that irreparable harm shall continue to occur due to the waste of city resources, and that irreparable harm shall continue to occur on all future alleged violators of red light cameras
- 19 That further, the County Court of Brevard County, Judge Kelly Jo McKibben has in fact ruled on April 6, 2011, in Case # 05-2010-TR-066947-AXXX-XX, which was an identical prosecution for alleged violation of red light signal, with the identical witness for the City, wherein the Court sustained the objection of hearsay and granted an involuntary dismissal of the Uniform Traffic Citation

WHEREFORE, Plaintiff prays that this Court grant the Plaintiff Injunction, temporarily and permanently, and grant all other relief that the Court deems Just and Proper

MOTION FOR LEAVE TO AMEND

COMES NOW the Plaintiff, **MARY M LOMBARDO**, by and through undersigned Counsel and hereby moves this Court for an Order granting leave to amend this Complaint for the reasons set forth below

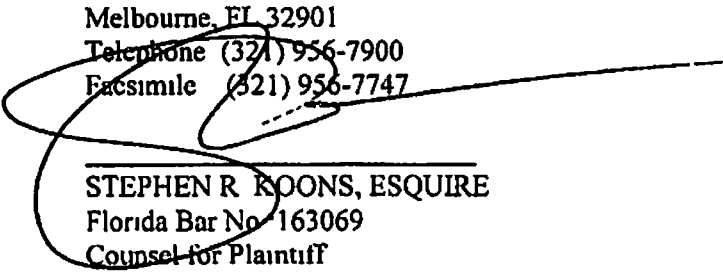
- 1 That the Defendant, City of Cocoa Beach, is a municipality and subdivision of the

State of Florida As such, the Defendant is entitled to a sovereign immunity notice if a suit for damages is brought (see F S 768 28(6)(c) 2011)

- 2 That the Plaintiff has forwarded through Counsel said sovereign immunity notice for damages, but at this time the City has not admitted or denied the claim A true and correct copy is attached (see Exhibit "B")
- 3 That it is the Plaintiff's intention to bring a claim for damages for a refund of all "fines" collected under the red light camera program, but cannot do so until the claim is denied by the City
- 4 It is anticipated that said claim will be denied

WHEREFORE, the Plaintiff requests this Court to grant leave to amend upon receipt of the City's denial of claim, and all other relief that the Court deems Just and Proper

The Law Offices of Koons & Gigliotti
25 West New Haven Avenue
Suite G
Melbourne, FL 32901
Telephone (321) 956-7900
Facsimile (321) 956-7747


STEPHEN R. KOONS, ESQUIRE
Florida Bar No. 163069
Counsel for Plaintiff
Email stephenrkoonspa@cfl.rr.com

Your vehicle was observed by a traffic infraction device or failing to comply with steady red light signal in violation of Florida Statutes § 316.0083 316.074(1) and 316.075(1)(c)1 at the intersection date and time stated on this front page of this Notice. This is a non criminal infraction of state law. No points will be assessed and this violation may not be used to set motor vehicle insurance rates.

Under Florida Statute § 316.0083 you as the registered owner of the vehicle are responsible for the violation unless you can establish by notarized affidavit that an exemption from such responsibility applies. You must (1) pay a statutory penalty of \$150.00 as described below or (2) furnish a sworn affidavit that complies with the provisions of Florida Statute § 316.0083 also described below as to which of the allowable exemptions from responsibility applies to you. It is recommended that the affidavit or payment be received eight (8) days prior to the due date specified on the front page of this notice to be appropriately processed or a UTC will be issued at a higher cost.

If you fail to respond a Uniform Traffic Citation (UTC) will be issued to you UNDER THIS STATUTE FOR THE STATED INFRACTION YOU MAY BECOME RESPONSIBLE FOR COURT FEES AND COSTS. Upon issuance of a UTC you shall have the remedies specified in Florida Statutes § 318.14 which include the right to have a hearing before a designated official who shall determine whether an infraction has been committed. If the official concludes that no infraction has been committed no costs or penalties shall be imposed. If the official concludes that an infraction has been committed the official may impose an additional civil penalty not to exceed \$500 and court fees and costs.

INSTRUCTIONS

VIEW YOUR IMAGES AND VIDEO EVIDENCE OBTAINED FOR THIS CASE. The recorded images and video of your violation will be submitted as evidence for the disposition of this violation. You may view your images and video online at www.violationinfo.com. You will need your Notice # and PIN printed on the front of this Notice inside the red box. If you do not have internet access, you may view your video and images at the Cocoa Beach City Hall 2 South Orlando Ave Cocoa Beach FL 32931 Mon - Fri 9AM - 4:30PM (excluding holidays).

ONLINE PAYMENT. The fastest and easiest way to pay your \$150.00 penalty is online. Go to www.violationinfo.com and login with your Notice # and PIN shown in the red box on the front of this notice. Click the Pay button. There is a \$4 convenience fee for this service.

PAYMENT BY PHONE. Call toll free 1 866 226 8876 between 8:00 a.m. and 5:00 p.m. Eastern time. There is a \$4 convenience fee.

PAYMENT BY MAIL. Mail your check or money order (payable to the City of Cocoa Beach) in the enclosed envelope with the coupon printed at the bottom of the reverse side of this Notice. PLEASE DO NOT MAIL CASH. Be sure to put the Notice # (see reverse) on the face of your payment.

TO CONTEST THIS VIOLATION. If you choose to appear before an official of the county court or plead not guilty, do not respond to this Notice of Violation. You will receive a Uniform Traffic Citation (UTC) in the mail. If you wish to contest the violation, you must appear in court within the time specified on the UTC. If you fail to appear, a judgment of guilty will be entered and you will receive a UTC.

SUBMISSION OF AFFIDAVIT. As the registered owner of the vehicle, you are deemed responsible for the violation and the payment of a \$150.00 penalty unless in compliance with Florida Statute § 316.0083(1)(c)1 a d you establish by a sworn affidavit that a statutory exemption applies. The exemptions are that the motor vehicle (a) passed through the intersection in order to yield the right of way to an emergency vehicle or as part of a funeral procession (b) passed through the intersection at the direction of a law enforcement officer (c) was at the time of the violation in the care custody or control of another person or (d) a UTC was issued by a law enforcement officer to the driver of the motor vehicle for the violation of Florida Statute § 316.074(1) and § 316.075(1)(c)1 stated in this Notice. The affidavit must be sworn before a notary public or other person authorized to administer oaths.

If you assert that the vehicle was in the care custody or control of another person, you must provide the name, address, date of birth, and if known the driver's license number of the person who leased, rented, or otherwise had care custody or control of the vehicle at the time of the violation. ACCEPTANCE OF THIS ASSERTION BY THE COCOA BEACH PD WILL RESULT IN THE ISSUANCE OF A UNIFORM TRAFFIC CITATION TO THE PERSON NAMED IN THE AFFIDAVIT. If the vehicle was stolen then the affidavit must include a copy of a police report showing the vehicle to have been stolen. If you assert that a UTC was issued by a law enforcement officer for the violation of Florida Statute § 316.074(1) and 316.075(1)(c)1 stated in this notice, then you must include the serial number of the UTC. For faster processing you may but are not required to include a copy of the UTC.

If your affidavit complies with the requirements of Florida Statute § 316.0083, then no further action will be taken and you will receive a notice of dismissal. If it is determined that your affidavit does not comply with those requirements set forth in the statute or if it is not received in time to process, then you will receive a Uniform Traffic Citation issued by the City of Cocoa Beach PD. The submission of a false affidavit is a misdemeanor of the second degree punishable under Fla. Stat. § 775.082 or § 775.083 by a term of imprisonment not to exceed sixty (60) days and/or a fine not to exceed \$500.

It is recommended that the affidavit or payment be received eight (8) days prior to the due date specified on the front page of this notice to be appropriately processed or a UTC will be issued at a higher cost. The affidavit should be mailed to City of Cocoa Beach, c/o Intersection Safety Program, P.O. Box 22091, Temple AZ 85285.

QUESTIONS. If you have any questions, please contact Customer Service toll free at 1-866-226-8876.

EXHIBIT

"A" Side "B"

Your vehicle was observed by a traffic infraction camera or fading to comply with a steady red light signal in violation of Florida Statute § 316.063(1) and 316.075(1)(c) at the intersection date and time stated on the front page of this Notice. This is a non criminal infraction of state law. No points will be assessed and this violation may not be used to set motor vehicle insurance rates.

Under Florida Statute § 316.063 you as the registered owner of the vehicle are responsible for the violation unless you can establish by notarized affidavit that an exemption from such responsibility applies. You must (1) pay a statutory penalty of \$168.00 as described below or (2) furnish a sworn affidavit that complies with the provisions of Florida Statute § 316.063 also described below as to which of the allowable exemptions from responsibility applies to you. It is recommended that the affidavit or payment be received eight (8) days prior to the due date specified on the front page of this notice to be appropriately processed or a UTC will be issued at a higher cost.

If you fail to respond a Uniform Traffic Citation (UTC) will be issued to you UNDER THIS STATUTE FOR THE STATED INFRACTION YOU MAY BECOME RESPONSIBLE FOR COURT FEES AND COSTS. Upon issuance of a UTC you shall have the remedies specified in Florida Statute § 316.14 which include the right to have a hearing before a designated official who shall determine whether an infraction has been committed. If the official concludes that no infraction has been committed, no costs or penalties shall be imposed. If the official concludes that an infraction has been committed, the official may impose an additional civil penalty not to exceed \$500 and court fees and costs.

INSTRUCTIONS

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ONLINE PAYMENT The fastest and easiest way to pay your \$168.00 penalty is online. Go to www.violationinfo.com and begin with your Notice # and PIN shown in the red box on the front of this notice. Click the Pay button. There is a \$4 convenience fee for an service.

PAYMENT BY PHONE Call toll free 1 888 226 8876 between 8:00 a.m. and 5:00 p.m. Eastern time. There is a \$4 convenience fee.

PAYMENT BY MAIL Mail your check or money order (payable to the City of Cocoa Beach) in the enclosed envelope with the coupon printed at the bottom of the reverse side of this Notice. PLEASE DO NOT MAIL CASH. Be sure to put the Notice # (see reversal on the face of your payment).

TO CONTEST THIS VIOLATION If you choose to appear before an official of the county court or plead not guilty, do not respond to this Notice of Violation. You will receive a Uniform Traffic Citation (UTC) in the mail. If you wish to contest the violation, you must appear in court within the time specified on the UTC. If you fail to appear, a judgment of guilty will be entered and you should proceed.

SUBMISSION OF AFFIDAVIT As the registered owner of the vehicle, you are deemed responsible for the violation and the payment of a \$168.00 penalty unless in compliance with Florida Statute § 316.063(1)(b) if you establish by a sworn affidavit that a statutory exemption applies. The exemptions are that the motor vehicle (a) passed through the intersection in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession (b) passed through the intersection at the direction of a law enforcement officer (c) was at the time of the violation in the care, custody or control of another person or (d) a UTC was issued by a law enforcement officer to the driver of the motor vehicle for the violation of Florida Statute § 316.074(1) and § 316.075(1)(c) stated in this Notice. The affidavit must be sworn before a notary public or other person authorized to administer oaths.

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If your affidavit complies with the requirements of Florida Statute § 316.063, then no further action will be taken and you will receive a notice of dismissal. If it is determined that your affidavit does not comply with those requirements set forth in the statute or it is not received in time to process, then you will receive a Uniform Traffic Citation issued by the City of Cocoa Beach PD. The submission of a false affidavit is a misdemeanor of the second degree punishable under Fla. Stat. § 775.082 or § 775.083 by a term of imprisonment not to exceed sixty (60) days and/or a fine not to exceed \$500.

It is recommended that the affidavit or payment be received eight (8) days prior to the due date specified on the front page of this notice to be appropriately processed or a UTC will be issued at a higher cost. The affidavit should be mailed to City of Cocoa Beach, c/o Intersection Safety Program, P.O. Box 22091, Tampa, AZ 85285.

QUESTIONS If you have any questions, please contact Customer Service toll free at 1 888 226 8876.



RETURN RECEIPT REQUESTED

NOTICE OF CLAIM-FLORIDA STATUTES 768-28(6)

TO

DEPARTMENT OF FINANCIAL SERVICES

State of Florida
The Capital
Tallahassee, FL 32314

MAYOR OF THE CITY OF COCOA BEACH

SKIP BEELER
2 South Orlando Avenue
Cocoa Beach, FL 32932

**BRIAN HOLMES, CHIEF OF POLICE, CITY OF
COCOA BEACH**

2 South Orlando Avenue
Cocoa Beach, FL 32932

CLAIMANT

MARY M LOMBARDO, individually and on behalf of all Red
Light Camera violations issued and paid, and on behalf of all
Cocoa Beach residents and taxpayers
Date of Birth June 25, 1928
Place of Birth Doddsville, MS
Social Security No 426-50-9924

PRIOR ADJUDICATED UNPAID CLAIMS -None

DATE OF INCIDENT September 22, 2010

PLACE OF INCIDENT Northbound Atlantic Ave, A1A and SR 520

DESCRIPTION OF INCIDENT

Ms Lombardo received a Red Light Camera Notice of Violation which she paid, not knowing that the City could not prove that she was the violator, because the City's evidence was inadmissible hearsay. Further, she did not know that the City had intentionally or negligently "short-yellowed" the lighting sequence in violation of the FDOT standards. Ms Lombardo demands the return of her \$158.00 paid and all of the fines collected by the City from each and every person who paid the fines since the institution of the Red Light Cameras in the City of Cocoa Beach, plus all other relief that the Court deems Just and Proper, including injunctive relief.

**IF ADDITIONAL INFORMATION IS NEEDED, PLEASE CONTACT THE
UNDERSIGNED PLEASE ACKNOWLEDGE RECEIPT HERETO**

EXHIBIT

"B"

I HEREBY CERTIFY THAT A TRUE AND CORRECT copy of the foregoing has been
sent by Certified Mail Return Receipt Requested to the above-agency this 8th day of April, 2011

THE LAW OFFICES OF KOONS & GIGLIOTTI
25 West New Haven Avenue
Suite G
Melbourne, Florida 32901
Ph (321) 956-7900
Fx (321) 956-7747

By 

STEPHEN R. KOONS, ESQUIRE
Florida Bar No 163069
Attorneys for the Plaintiff

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece or on the front if space permits

Article Addressed to

Shirley Beeler
Mayor of the City of
Joca Beach
2 South Orlando Ave
Joca Beach, FL 32932

Article Number

(Transfer from service label)

7009 1410 0001 0543 6537

PS Form 3811 February 2004

Domestic Return Receipt

102505-02 M 15

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Steve O'Neill

☐ Agent☐ Addressee

B. Received by (Printed Name)

Steve O'Neill

C. Date of Delivery

D. Is delivery address different from item 1?

If YES enter delivery address below

☐ Yes☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ COD

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

OFFICIAL USE

Postage		\$
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees		\$

Postmark Here

Sent To

Street Apt. No.
or PO Box No.
City State ZIP+4

259 450 1000 0747 6002

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you
- Attach this card to the back of the mailpiece or on the front if space permits

Article Addressed to

Brian Holmes
Chief of Police, City of
Joca Beach
1 South Orlando Ave
Joca Beach, FL 32932

Article Number

(Transfer from service label)

7009 1410 0001 0543 6520

PS Form 3811, February 2004

Domestic Return Receipt

102505-02 M 15

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Steve O'Neill

☐ Agent☐ Addressee

B. Received by (Printed Name)

Steve O'Neill

C. Date of Delivery

D. Is delivery address different from item 1?

If YES enter delivery address below

☐ Yes☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ COD

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

OFFICIAL USE

Postage		\$
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees		\$

Postmark Here

Sent To

Street Apt. No.
or PO Box No.
City State ZIP+4

259 450 1000 0747 6002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To

Street Apt. No.
or PO Box No.
City State ZIP+4

1/1

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

MARY M LOMBARDO, individually
and as a City of Cocoa Beach resident and
taxpayer and as a aggrieved,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH, a subdivision
of the State of Florida,

Defendants

CH NEEDELMAN
JUL JUN 23 A 9 25
CD IN TYL-01
JRK OF CIR CT
REWARD CO FL

NOTICE OF APPEARANCE

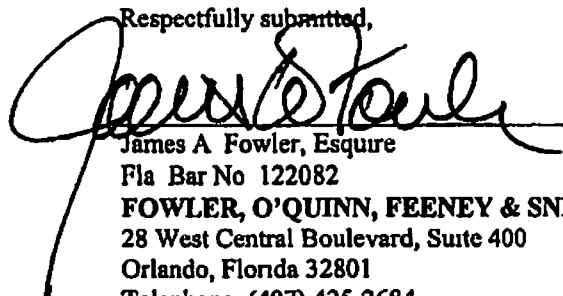
The undersigned attorney gives notice of appearance for the Defendants, CITY OF COCOA BEACH, a subdivision of the State of Florida, and requests that all correspondence, pleadings, and papers be served upon him at the address given

JAMES A FOWLER, ESQUIRE
FOWLER, O'QUINN, FEENEY & SNEED, P A
28 W Central Boulevard, Suite 400, Orlando, Florida 32801

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Appearance was furnished via facsimile at 321 956 7747 and via U S Mail to Stephen R Koons, Esquire of The Law Offices of Koons & Gigliotti at 25 West New Haven Avenue, Suite G, Melbourne, Florida 32901 this 22nd day of June, 2011

Respectfully submitted,



James A Fowler, Esquire
Fla Bar No 122082
FOWLER, O'QUINN, FEENEY & SNEED, P A
28 West Central Boulevard, Suite 400
Orlando, Florida 32801
Telephone (407) 425-2684
Facsimile (407) 425-2690
Attorney for Defendants

Case # 05 2011 CA 014614-XXXX-XX
Document Page # 5



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IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH,

Defendant

FILED IN T.V. 01
FILED IN CIR CT
FILED IN CO FL
2011 JUL -8 A 10 18
MITCH FORTNEY 11/11/11

MOTION TO DISMISS

COMES NOW, Defendant CITY OF COCOA BEACH, by and through undersigned counsel and respectfully files this Motion to Dismiss and incorporated Memorandum of Law and as grounds in support thereof, states as follows

- 1 Plaintiff has brought a one count complaint seeking injunctive relief against Defendant, City of Cocoa Beach
- 2 Plaintiff's Complaint fails to state a cause of action upon which relief may be granted in that it is barred by the voluntary payment doctrine
- 3 Plaintiff's Complaint fails to allege any defined "clear legal right "
- 4 Plaintiff's Complaint fails to identify or demonstrate any irreparable harm
- 5 Plaintiff's Complaint fails to state a cause of action in that they failed to identify any inadequate remedy at law
- 6 Finally Plaintiff's Complaint fails to state a cause of action in that it fails to identify the consideration of any public interest

DEAN RINGERS
MORGAN AND LAWTON P A
POST OFFICE BOX 2926
ORLANDO FLORIDA
32802
(407) 422 4310

Case # 05-2011-CA-014614-XXXX-XX
Document Page # 6



017886920

MEMORANDUM OF LAW

I INTRODUCTION

On September 22, 2010, Plaintiff ran a red light in the City of Cocoa Beach in violation of Florida Statutes § 316 0083, §316 074(1) and §316 075(1)(c)(1). Plaintiff's violation was captured by a traffic light camera and she was issued a \$158.00 Notice of Violation, which she subsequently paid. See Complaint, paragraph 3. Prior to Plaintiff's violation, the City of Cocoa Beach instituted a red light camera enforcement program pursuant to the "Mark Wandall Traffic Safety Program." Florida Statute § 316 0083.

Following Plaintiff's violation and voluntary payment of the fine, Plaintiff filed her Complaint for injunctive relief alleging "irreparable harm to all others who drive in the City at these locations, because this program is not sustainable under Florida law."

II THE VOLUNTARY PAYMENT DOCTRINE IS A BAR TO PLAINTIFF'S CLAIMS

Plaintiff's payment of the violation precludes her from challenging the infraction in this court. There is a longstanding Florida Supreme Court precedent holding that when a person voluntarily pays a fine issued under a City Ordinance, that person is precluded from later seeking the return of those monies, even if the ordinance is later declared invalid. *City of Miami v. Keaton*, 115 So.2d 547 (Fla. 1959). The *Keaton* case controls the outcome of this litigation.

As explained by the Florida Supreme Court in *Keaton*, the voluntary payment doctrine is a universal rule holding "That where one makes a payment of any sum under a claim of right with knowledge of the facts, such payment is voluntary and cannot be recovered." *Keaton*, 115 So.2d at 551. The Supreme Court further held that especially in situations where there is a

DEAN RINGERS
MORGAN AND LAWTON, P.A.
POST OFFICE BOX 2928
ORLANDO, FLORIDA
32802

(407) 422-4310

right of appeal (such as this case), the voluntary payment doctrine bars recovery of the money paid, even if the ordinance authorizing the initial action is later determined to be invalid, *Id*

It should also be noted that federal courts across the nation addressing this identical issue have ruled that plaintiffs who fail to challenge their red light citation through the available administrative hearing process lack standing to bring their challenge in court. *See Williams v Redflex Traffic Sys., Inc.* 582 F.3d 617, 620 (6th Cir. 2009) (plaintiff who did not challenge her red light camera citation through the city's administrative hearing lacked standing to challenge the ordinance, such a plaintiff resembles "a mere outsider with a non-justiciable 'general grievance'"), *Idris v. City of Chicago, Ill.* 552 F.3d 564, 565 (7th Cir. 2009) (noting that plaintiffs and putative class members would be barred by the doctrine of claim preclusion from challenging a city's red light camera ordinance if they did not present their contentions through the city's administrative process), *Akbar vs. Daley*, 2009 WL 3055322 (N.D. Ill. 2009) (same), *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (M.D.N.C. 2003) (plaintiff lacked standing to challenge an automated red light ordinance where the plaintiff refused to pay and did not appeal the citation and, therefore, "ha[d] not availed himself of the process" provided by the defendants).

The voluntary payment defense is ripe for determination at the motion to dismiss stage since on its face, Plaintiff's Complaint alleges she is "an aggrieved party due to her payment of a photo enforced failure to obey traffic signal 'ticket' " (Plaintiff's Complaint, paragraph 3)

III PLAINTIFF HAS FAILED TO STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED

The entirety of Plaintiff's Complaint stems from the red light camera enforcement program instituted pursuant to Florida Statute § 316.0083. The allegations raised in the Complaint have become commonplace, as the use of red light cameras has developed into a

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MORGAN AND LAWTON P.A.
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ORLANDO, FLORIDA
32802
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nearly nationwide practice. A thorough review of relevant case law reveals that courts addressing this issue have systematically refused to invalidate a local government's use of red light cameras, as Plaintiff attempts to in this case through her Complaint for injunctive relief. *See, e.g., Akbar vs. Daley*, 2009 WL 3055322 (N.D. Ill. 2009), *Idris vs. City of Chicago*, 552 F.3d 564 (7th Cir. 2009), *Kilper vs. City of Arnold, MO*, 2009 WL 2208404 (E.D. Mo. 2009), *Greenfield vs. City of Davenport*, 2009 WL 2960622 (Iowa App. 2009), *Hoekstra vs. City of Arnold Mo.*, 2009 WL 259857 (E.D. Mo. 2009), *McCarthy vs. City of Cleveland*, WL 2424296 (N.D. Ohio 2009), *City of Knoxville vs. Brown*, 284 S.W.3d 330 (Tenn. Ct. App. 2008), *Agomo vs. Fenty, Mayor/District of Columbia*, 916 A.2d 181 (D.C. App. 2007), *Shavitz vs. City of High Point, NC*, (270 F.Supp.2d 702 (N.D. N.C. 2003), *McNeill vs. Town of Paradise Valley, Az* (24 Fed Appx 871) 2002 WL 1905978 (9th Cir. 2002).

**IV PLAINTIFF HAS FAILED TO ALLEGE SUFFICIENT FACTS
TO DEMONSTRATE IRREPARABLE HARM,
A CLEAR LEGAL RIGHT, AND INADEQUATE
REMEDY AT LAW AND CONSIDERATION
OF PUBLIC INTEREST**

A party seeking an injunction under general Florida law must demonstrate (1) irreparable harm, (2) a clear legal right, (3) an inadequate remedy at law, and (4) consideration of public interest. *See Hites v. Auto Bahn Federation, Inc.*, 498 So.2d 997 (Fla. 4th DCA 1986), *Finklestein v. Southeast Bank, N.A.*, 1990 So.2d 1976, 1980 (Fla. 4th DCA 1986). Florida Courts have held that a temporary injunction is an extraordinary remedy and should be granted sparingly. *Contemporary Interiors, Inc. v. Four Marks, Inc.*, 384 So.2d 734, 735 (Fla. 4th DCA 1980).

Plaintiff has failed to plead any of the requirements for issuance of an injunction. In Plaintiff's Complaint she alleges that the red light camera enforcement program instituted by

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the City is doing irreparable harm to "all others who drive in the City at these locations " (Plaintiff's Complaint, paragraph 15) Plaintiff further alleges that it is "inevitable the City will eventually be required to reimburse all ticket-payers who have been the victim of this scheme to convert funds from the motoring public " As noted above, this allegation is not only unlikely, but improbable based upon the Florida Supreme Court holding in *Keaton Id* Accordingly, no irreparable harm has been alleged

Further the irreparable harm to those who drive within the City are monetary damages It has long been held that injunctive relief may not be used to enforce money damage, or to prevent any party from disposing of assets See *Hiles* at 997 See also *Action Electric & Repair, Inc v Batelli*, 416 So 2d 88 (Fla 4th DCA 1982) Plaintiff's concern for the continued used of City funds and resources and for future violators of red light cameras does not constitute irreparable harm

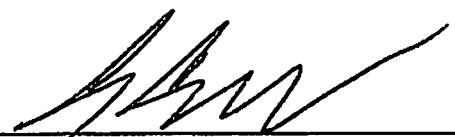
WHEREFORE, for the reasons presented herein, Defendant City of Cocoa Beach, respectfully requests this Court enter an Order dismissing Plaintiff's Complaint for Injunctive Relief with prejudice, and for such other and further relief as the Court deems just and proper

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue, Suite G, Melbourne, FL

DEAN RINGERS
MORGAN AND LAWTON P A
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ORLANDO FLORIDA
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(407) 422 4310

6/6

32901 this 7 day of July, 2011



G CLAY MORRIS, ESQ
Florida Bar No 0750190
Dean, Ringers, Morgan & Lawton, P A
Post Office Box 2928
Orlando, Florida 32802-2928
Tel 407-422-4310
Fax 407-648-0233
CMorris@drml-law.com
Attorneys for Defendant

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(407) 422 4310

1/1

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH,

Defendant

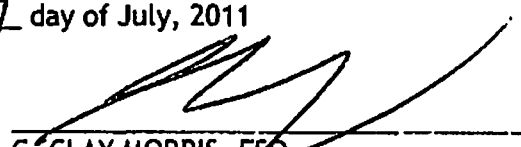
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CLAY MORRIS
BREVARD CO FL

NOTICE OF HEARING

PLEASE TAKE NOTICE that on Tuesday, August 23, 2011 at 10 00 a m , or as soon thereafter as counsel may be heard, the undersigned will call up for hearing and argument before and for disposition by the Honorable Jeffrey Mahl, 4th Floor, at the Brevard County Courthouse, in Viera, Florida, the following

DEFENDANT'S MOTION TO DISMISS

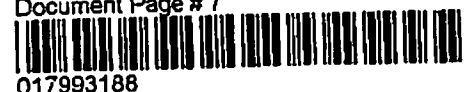
I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue, Suite G, Melbourne, FL 32901 this 27 day of July, 2011


G CLAY MORRIS, ESQ.
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Tel 407-422 4310
Fax 407-648-0233
CMorris@drml-law.com
Attorneys for Defendant

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding you are entitled at no cost to you to the provision of certain assistance. Please contact Court Administration 400 South St. Titusville FL 32780 (321) 637-4113 at least 7 days before your scheduled court appearance or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days. If you are hearing or voice impaired call 711.

Case # 05 2011 CA 014614-XXXX XX
Document Page # 7



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1/1

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH,

Defendant


FILED
CLERK OF CIR CT
BREVARD CO FL
2011 JUL 28 A 9 42
J. EDLHMAN

DEFENDANT'S REQUEST FOR ADMISSIONS TO PLAINTIFF

COMES NOW, Defendant CITY OF COCOA, by and through undersigned counsel and submits this Request for Admissions to Plaintiff as follows

- 1 Admit that on October 6, 2010, a Notice of Violation was issued to Plaintiff Mary M Lombardo by the City of Cocoa Beach Intersection Safety Program
- 2 Admit that as a result of the receipt of the Notice of Violation you paid a \$158 00 fine for violation of Florida Statute § 316 075

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue, Suite G, Melbourne, FL 32901 this 27 day of July, 2011


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Attorneys for Defendant

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Case # 05-2011-CA-014614-XXXX-XX
Document Page # 8



11/2

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH,

Defendant

2011 JUL 28 A 9 42
CLERK OF CIR CT
BREVARD CO FL
JUDITH FIDELMAN

NOTICE OF SERVING INTERROGATORIES TO PLAINTIFF

Defendant CITY OF COCOA BEACH, by and through its undersigned counsel and pursuant to Florida Rule of Civil Procedure 1 340(e), hereby files this Notice of Service of the original and one copy of Interrogatories to be answered in writing, under oath, within thirty (30) days of service herein

Pursuant to Florida Rule of Civil Procedure 1 280(5), if you claim any information is privileged or subject to protection as trial preparation material, please claim expressly and describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable this defendant to assess the applicability of the privilege or protection

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue,

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(407) 422 4310

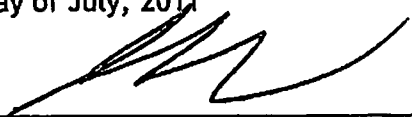
Case # 05-2011-CA-014614-XXXX-XX
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Suite G, Melbourne, FL 32901 this 27 day of July, 2011



G CLAY MORRIS, ESQ
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Attorneys for Defendant

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1/2

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

vs

CITY OF COCOA BEACH,

Defendant

FILED
CLERK OF CIRCUIT
BREVARD CO FL
2011 JUL 28 A 9 42
JESSIE DELMAN

DEFENDANT'S SECOND REQUEST TO PRODUCE TO PLAINTIFF

COMES NOW, Defendant CITY OF COCOA BEACH, by and through undersigned counsel and pursuant to Rule 1 350 Florida Rules of Civil Procedure, and requests that Plaintiff MARY M LOMBARDO produce the following documents to the undersigned counsel within thirty (30) days of service hereof for examination, inspection and copying and as grounds therefore, says that the materials are in the custody or control of that party and are relevant and material to the issues in this cause

1 Copies of any and all documents in Plaintiff's possession which in any way support the allegations contained in your Complaint

2 Copies of any and all correspondence, memoranda and documents from the City of Cocoa Beach regarding the allegations contained in the Complaint

3 Copies of any and all correspondence, memoranda and documents from Plaintiff to the City of Cocoa Beach regarding the allegations contained in the Complaint

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32802
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Case # 05-2011-CA-014614-XXXX-XX
Document Page # 10

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4 Copy of the cancelled check for payment of the fine identified in Plaintiff's Complaint

5 Copies of all documents, papers or evidence to be introduced at trial

6 Copies of all expert's reports who will testify at the trial of this cause

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue, Suite G, Melbourne, FL 32901 this 27 day of July, 2011


G CLAY MORRIS, ESQUIRE
Florida Bar No 0750190
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Fax 407-648-0233
CMorris@drml-law.com
Attorneys for Defendant

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ORLANDO FLORIDA
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(407) 422 4310

1/1

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN AND
FOR BREVARD COUNTY, FLORIDA

MARY M LOMBARDO, individually,
and as a City of Cocoa Beach resident and
taxpayer and as a aggrieved party

Plaintiff,

CASE NO 05-2011-CA-014614-XXXX-XX

v

CITY OF COCOA BEACH, a subdivision
of the State of Florida

Defendant

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BREVARD CO FL
2011 AUG 24 P 12 21

RESPONSE TO REQUEST FOR ADMISSIONS

COMES NOW the Plaintiff, MARY M LOMBARDO, by and through her undersigned counsel,
and files this her Response to Request for Admissions propounded by the Defendant, CITY OF COCOA
BEACH on July 27, 2011 and would state as follows

- 1 Denied, because at this time I do not know why the City issued a citation to me
- 2 Denied I paid the fine because I felt coerced and threatened to do so and was unaware that
the City could not legally prove that I was guilty of running a red light I also was unaware
that the yellow light duration had been rigged so that I had inadequate time to stop

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been furnished via US MAIL to G CLAY
MORRIS, ESQUIRE, Dean Ringers, Morgan & Lawton, PA, PO Box 2928, Orlando, Florida, 32808-2928
on this 23rd Day of August, 2011

The Law Offices of Koons & Gigliotti
25 West New Haven Avenue
Suite G
Melbourne, FL 32901
Telephone (321) 956-7900
Facsimile (321) 956-7747

STEPHEN R. KOONS, ESQUIRE
Florida Bar No 163069
Attorneys for Plaintiff
Email stephenrkoons@riddell.com

Case # 05-2011-CA-014614-XXXX XX
Document Page # 11



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OR

CLOSED

IN THE CIRCUIT COURT
OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

1/2

MARY M LOMBARDO,

CASE NO 2011-CA-14614

Plaintiff,

VS

CITY OF COCOA BEACH,

Defendant

FILED IN VIERA-B
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BREVARD CO FL
2011 SEP -1 A 10:49
MITCH WEDELMAN
5231

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE having come to be heard on August 23, 2011 on Defendant's Motion to Dismiss, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that

1 Defendant's Motion to Dismiss is hereby GRANTED,

2 Plaintiff shall have 30 days from the date of this Order within which to file an Amended Complaint

DONE AND ORDERED in Viera, Brevard County, Florida this 31st day of August, 2011

Case # 05-2011 CA-014614 XXXX XX
Document Page # 12



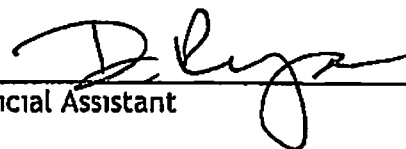
018146040


JEFFREY MAHL
Circuit Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U S mail to Stephen R Koons, P A , 25 West New Haven Avenue, Suite G, Melbourne, FL 32901, James Fowler, Esquire, Fowler, O Quinn, Feeney & Sneed, P A ,

28 W Central Blvd , Suite 400, Orlando, FL 32801, and G Clay Morris, Esq , Post
Office Box 2928, Orlando, FL 32802 2928, this 1 day of Sept.,
2011

2/2


Judicial Assistant

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY, FLORIDA

MARY M. LOMBARDO, individually,
and as a City of Cocoa Beach resident and
taxpayer and as a aggrieved party.

Plaintiff,

v.

CITY OF COCOA BEACH, a subdivision
of the State of Florida.

Defendant.

CASE NO:05-2011-CA-014614-XXX-XX

FILED IN HL B
CLERK OF CIR. CT.
BREVARD CO. FL.
2011 SEP 30 P 2:11
MITCH NEEDELMAN

MOTION FOR EXTENSION OF TIME

COMES NOW the Plaintiff, MARY M. LOMBARDO, by and through the undersigned attorney, and requests this Court for an Order granting an extension of time to file her 1st Amended Complaint for the reasons set forth below:

1. Plaintiff needs an additional 7 days to file her Amended Complaint due to scheduling conflicts with the undersigned Attorney.
2. Further, Plaintiff needs additional time to finalize her Amended Complaint which includes Constitutional challenges.
3. The undersigned Attorney has contacted G. Clay Morris, Counsel for the Defendant, and he has advised that he has no objection to this extension request.

WHEREFORE, the Plaintiff requests this Court grant an extension of seven days time to file her First Amended Complaint.

CERTIFICATE OF SERVICE

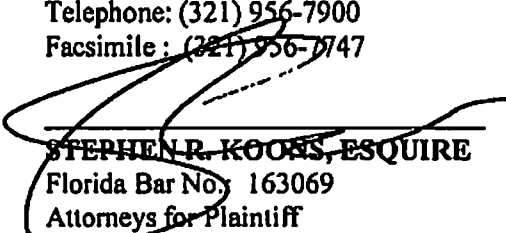
I HEREBY CERTIFY that a true and correct copy has been furnished via US MAIL to G. CLAY MORRIS, ESQUIRE, Dean, Ringers, Morgan & Lawton, PA, PO Box 2928, Orlando, FL

Case # 05-2011-CA-014614-XXX-XX
Document Page # 13
018273546

32808-2928 and **JAMES A. FOWLER, ESQUIRE**, Fowler, O'Quinn, Feeney & Sneed, PA, 28
West Central Boulevard, Suite 400, Orlando, FL 32801 On this 30th Day of May, 2011.

2/2

The Law Offices of Koons & Gigliotti
25 West New Haven Avenue
Suite G
Melbourne, FL 32901
Telephone: (321) 956-7900
Facsimile : (321) 956-7747


STEPHEN R. KOONS, ESQUIRE
Florida Bar No. 163069
Attorneys for Plaintiff
Email: stephenrkoonspa@cll.r.com

1/1

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA <input type="checkbox"/> IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA	CASE NUMBER 05 - 2011 - CA - 014814 - XXXX-XX
PLAINTIFF MARY M LOMBARDO	CLOCK IN FILED October 17, 2011 7:16:59 AM CLERK OF CIRCUIT COURT BREVARD COUNTY, FLORIDA
DEFENDANT CITY OF COCOA BEACH TO: STEPHEN R KOONS ESQ 25 W NEW HAVEN AVE STE G MELBOURNE FL 32901-4463	

On OCTOBER 12, 2011, you filed AMEI VDED COMPLAINT.
 The total fees assessed for this activity are listed below.

Initial Filing Fee	\$
Reopen Filing Fee	\$ 50.00
Pro Hac Vice	\$
Lis Pendens Recording Fee	\$
Lis Pendens Indexing Fee Over 4 Parties	\$
Additional Defendants Fee	\$
Postage	\$
Summons Issuance Fee	\$
Counter Petition Fee	\$
Partial Payment Fee for Current Payment	\$
Guardianship Audit Fee	\$
	\$
	\$
	\$

Your office remitted \$0.00, leaving a balance due in the amount of \$50.00. Pursuant to Section 28.246(5), a \$5.00 partial payment fee is charged per month for each partial payment that is remitted to the Clerk. If the above noted amount is not received in this office within this calendar month, an additional \$5.00 partial payment fee will be assessed.

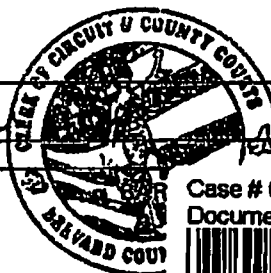
The service you are seeking may not be completed until full payment is received. Failure to remit the above fees within 30 days may result in dismissal of the referenced action. Also, should this debt remain unpaid for 90 days, it will be referred to a collection agency.

Please remit payment, along with a copy of this letter, to: Brevard Clerk of Court, P.O. Box 219, Titusville, FL 32781-0219.

Should you have any questions, please contact me at 321-637-5413, extension 59225 or by e-mail at WWW.BREVARDCLERK.US.

MITCH NEEDELMAN CLERK OF COURTS	BY <u><i>Rusher</i></u> RUSHER	DC	DATE 10/17/11
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LAW 932
Rev. 09/28/2011



Case # 05-2011-CA-014814-XXXX-XX
Document Page # 15

